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 ROBERT A. FRANKLIN (091653)  
 MURRAY & MURRAY  
 A Professional Corporation  
 19400 Stevens Creek Blvd., Suite 200  
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 Telephone: (650) 852-9000; (408) 907-9200  
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Attorneys Specially Appearing for Defendant  
 Fresh 'N Healthy, Inc.

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

ASA FARMS, INC., a California  
 corporation and BRAGA RANCH,

Plaintiff(s).

v.

FRESH 'N HEALTHY, INC., a Delaware  
 corporation, MARK WILLIAMS, an  
 individual; JACK PARSON, an individual;  
 STEVEN CINELLI, an individual; CHAD  
 HAGEN, an individual, SANTOS  
 MARTINEZ, an individual; DON BEAM,  
 an individual; DARRYL NICHOLSON, an  
 individual; RICHARD MAY, an individual;  
 THOMAS COLOGNA, an individual;  
 PRESTWICK PARTNERS, LLC, a  
 California limited liability company;  
 SOLSTICE VENTURE PARTNERS, LLC,  
 a business entity form unknown;  
 VFINANCE INVESTMENTS, a business  
 entity form unknown; FMP VINEYARD,  
 LLC, a New Mexico limited liability  
 company; BUTTONWOOD OPTION, LLC,  
 a business entity form unknown; DW, LLC,  
 a business entity form unknown; M  
 SOLAZZO TRUST 2002; P. SOLAZZO  
 1998; GIBBONS FAMILY TRUST;  
 BIXLER TRUST; STEIGERWALD TRUST  
 and CARTER TRUST, and DOES 1 through  
 50, inclusive,

Defendant(s).

Case No. C08-00122 PVT

**EXHIBIT "A" To**

**DECLARATION OF RUSSELL K. BURBANK IN  
 SUPPORT OF RESPONSE TO OBJECTION TO  
 STIPULATION MODIFYING PRELIMINARY  
 INJUNCTION**



*Building your future*

January 15, 2007

Bob Jenkins  
CEO, River Ranch Fresh Foods, LLC  
1156 Abbott Street  
Salinas, CA 93901  
Fax: 831-755-8281

**Subject: Invitation to Acquire the Assets of Fresh 'N Healthy, Inc.**

Dear Mr. Bob Jenkins:

Fresh 'N Healthy, Inc. has terminated its operations and is in the process of selling its assets for the benefit of its creditors. The sale is being conducted with the cooperation of Fresh 'N Healthy's senior secured creditor.

As one who is actively engaged in the fresh produce business, you are invited to acquire, in a private sale, all of Fresh 'N Healthy's processing assets located in either Gilroy, CA and/or El Centro, CA.

Absent a successful private sale, these assets will be sold at public auction. All sales will be conducted on an "as-is, where-is" basis with "no reps and warranties."

Should you have an interest in acquiring Fresh 'N Healthy's processing assets, please contact the undersigned immediately for more information.

Time is of the essence. Your timely response to this invitation is essential. You may forward this invitation to others who you believe may have an interest in this opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Burbank", is written over a horizontal line.

Russell Burbank  
Liquidating Advisor to Fresh 'N Healthy, Inc.  
Phone: 415-677-4530  
Fax: 415-288-6288  
E-Mail: [rburbank@bpmllp.com](mailto:rburbank@bpmllp.com)

*Member of The Leading Edge Alliance*

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**EXHIBIT "B" To**

**DECLARATION OF RUSSELL K. BURBANK IN  
 SUPPORT OF RESPONSE TO OBJECTION TO  
 STIPULATION MODIFYING PRELIMINARY  
 INJUNCTION**

FROM : ASHMAN

FAX NO. : 9252568436

Jan. 31 2008 04:51PM P2



## ASHMAN COMPANY

Auctioneers • Appraisers

1415 Oakland Blvd., Suite 200

Walnut Creek, California 94596-4349

January 31, 2008

Mr. Steve Cinelli, Director  
Fresh 'N Healthy, Inc.  
2460 Heather Heights Road  
Saratoga, California 95070

RE: Purchase of Assets for Fresh 'N Healthy, Inc.

Dear Mr. Cinelli,

Ashman Company agrees to purchase all the equipment secured by Fresh 'N Healthy, Inc., including the Processing, Farm Equipment, Pumps, Irrigation Pipe, Forklifts, Trucks, Trailers, Warehouse, and Office Furnishings, used in the business of Fresh 'N Healthy, located in Gilroy, California and in El Centro, California for the amount of \$525,000,000. Our purchase agreement includes the irrigation pipe that is located at the El Centro and Gilroy locations only. Any additional irrigation pipe that is included in the auction, all the proceeds will be divided 50% to Fresh 'N Healthy, Inc. and 50% to Ashman Company.

A check in the amount of \$525,000.00 will be paid in full via wire transfer or cashier's check to Fresh 'N Healthy, Inc. after an inventory has been complete and agreed to by both parties

The auction will be held on premises of 4395 Davidson Road in Gilroy, California on a date acceptable to both parties. Ashman Company will require use of the premises in Gilroy and El Centro, California through March 15, 2008. Fresh 'N Healthy, Inc. will deliver access to Ashman Company Auctioneers. Ashman Company agrees to pay rent and utilities through March 15, 2008 and will be granted access by Fresh 'N Healthy, Inc. Ashman Company will also indemnify Fresh 'N Healthy, Inc., and the landlord with public liability insurance of up to five million dollars. Removal of the equipment will be under the direct supervision of our auction staff to insure damage to the premises does not occur.

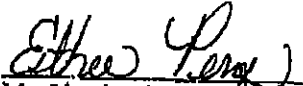
Fresh 'N Healthy, Inc. agrees to provide free and clear title to all items sold and deliver title to Ashman Company and does hereby assume and agree to indemnify and hold the auctioneers harmless from any future creditor's claims. Fresh 'N Healthy, Inc. guarantees that all equipment is free and clear from any liens or encumbrances. Ashman Company will purchase all equipment in an "as is, where is" condition.

In the event a lawsuit is brought by any party hereto, to enforce the terms described in this agreement or because of any controversy arising from the agreement, the prevailing party shall be entitled to its attorneys' fees and costs.

Ashman Company auctioneers and Appraisers, Inc. is not responsible for the removal of any hazardous or chemical materials including but not limited to: oils, lubricants, and any other hazardous materials.

Agreed to by:

Agreed to by:

for:   
Mr. Lloyd Ashman, President  
Ashman Company Auctioneers & Appraisers, Inc.  
L.Aep

  
Mr. Steve Cinelli, Director  
Fresh 'N Healthy, Inc.

(925) 256 8111 • (714) 752-7207 • Fax (925) 256-8436  
www.ashmancompany.com

FROM: ASHMAN

FAX NO. :9252568436

Jan. 31 2008 04:51PM P1



Industrial • Commercial • Auctioneers



Lloyd Ashman, Auctioneer  
1415 Oakland Blvd., #200, Walnut Creek, CA 94596-4349  
No. Ca. (925) 256-8111 • FAX (925) 256-8436 • So. Ca. (949) 752-7207  
www.ashmancompany.com • CA Bond 30191454

## FAX TRANSMITTAL

To: Mr. Russell K. Burbank, CTP	From: Lloyd Ashman
Fax: (415) 288-6288	Pages: 2 (including cover)
Phone: (415) 677-4530	Date: January 31, 2008
Re: Auction Proposal for Fresh 'N Healthy, Inc.	

### MESSAGES:

PLEASE CONTACT OUR OFFICE IF YOU DO NOT RECEIVE ALL TRANSMITTED PAGES.

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**EXHIBIT "C" To**

**DECLARATION OF RUSSELL K. BURBANK IN  
 SUPPORT OF RESPONSE TO OBJECTION TO  
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 INJUNCTION**

Russ Burbank  
Gourmet Veg-Paq  
Hollister, CA

Dear Russ,

Thank you for the opportunity to inspect the equipment and offer the following proposal for the dispersal of the same. I have looked at the major pieces and will outline how I believe we need to proceed.

Due to the equipment being located in 2 separate general locations, pending problems with the landlord and the Hollister yard is very small; I feel the best option would be to move the equipment to our facility located at Tipton, CA. There is a considerable amount of cleaning and refurbishing that needs to be done to maximize the dollar return and we can handle that much better at our facility.

I feel the equipment would sell for \$600,000 in the February 15<sup>th</sup> auction at our facility. This is excluding the packing equipment and the pipe. This figure is based on the list furnished by the Gourmet Veg-Paq people. I feel that the pipe has been cherry picked as a good portion was sold to a company allowing them to pick and choose what they wanted, then Farm Credit Leasing picked up what they felt was theirs and that can't leave a lot of good pipe. I also saw evidence that some pipe had been scraped in the El Centro facility, and unless some accounting is available for how much was scraped it will just take a while to sort it out.

Martella Auction Co., Inc. has the resources to move and refurbish the equipment and expedite the sale properly, however, time is of the essence for advertising. The refurbishing estimate is \$14,000. This includes cleaning and batteries but no major mechanical work. There are 4 tractors with major mechanical problems. A Cat Challenger, JD 4650, Kubota and a Wabco motor grader would be sold as is, because it is not feasible to repair them. The transportation cost estimate is \$54,000. This includes equipment from El Centro (excluding the pipe and packing equipment) as well as the Hollister equipment.

All of the gas vehicles will need to pass a smog check to be sold. Each vehicle will be smog tested and if it needs too much repair it will be sold to a salvage company. All of the vehicles must have current registration and title in the company name. I have seen some of the registrations and many of them are showing liens. I feel that they are paid off but we still need a lien release from the lien holder to pass the title to the new owner.

I feel the best way to dispose of the packing equipment would be private treaty sale and that would be better addressed later. The timing is crucial regarding the farm equipment.

The procedure for auction is as follows:

1. Sign a contract with Martella Auction Co., Inc.
2. Advertising to start.
3. Move equipment to auction facility.
4. Refurbishing & Cleaning
5. February 7 Equipment lined to make catalog
6. February 11 catalog complete and inspection by prospective buyers
7. February 15 Auction.
8. February 18 recap of auction proceeds to consigners
9. March 6 disperse proceeds.

I have attached a copy of the contract.

Again I would like to thank you for the opportunity to make this proposal. If you have any questions feel free to give me a call.

Sincerely  
Martella Auction Co., Inc.

J. R. Searcy  
Cell 559-280-4481  
Office 559-752-3343  
Fax 559-752-1020